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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NILO M. PRADA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

FEB 2 1960

FILED

DEC 17 1959

WM. B. LISK, CLERK

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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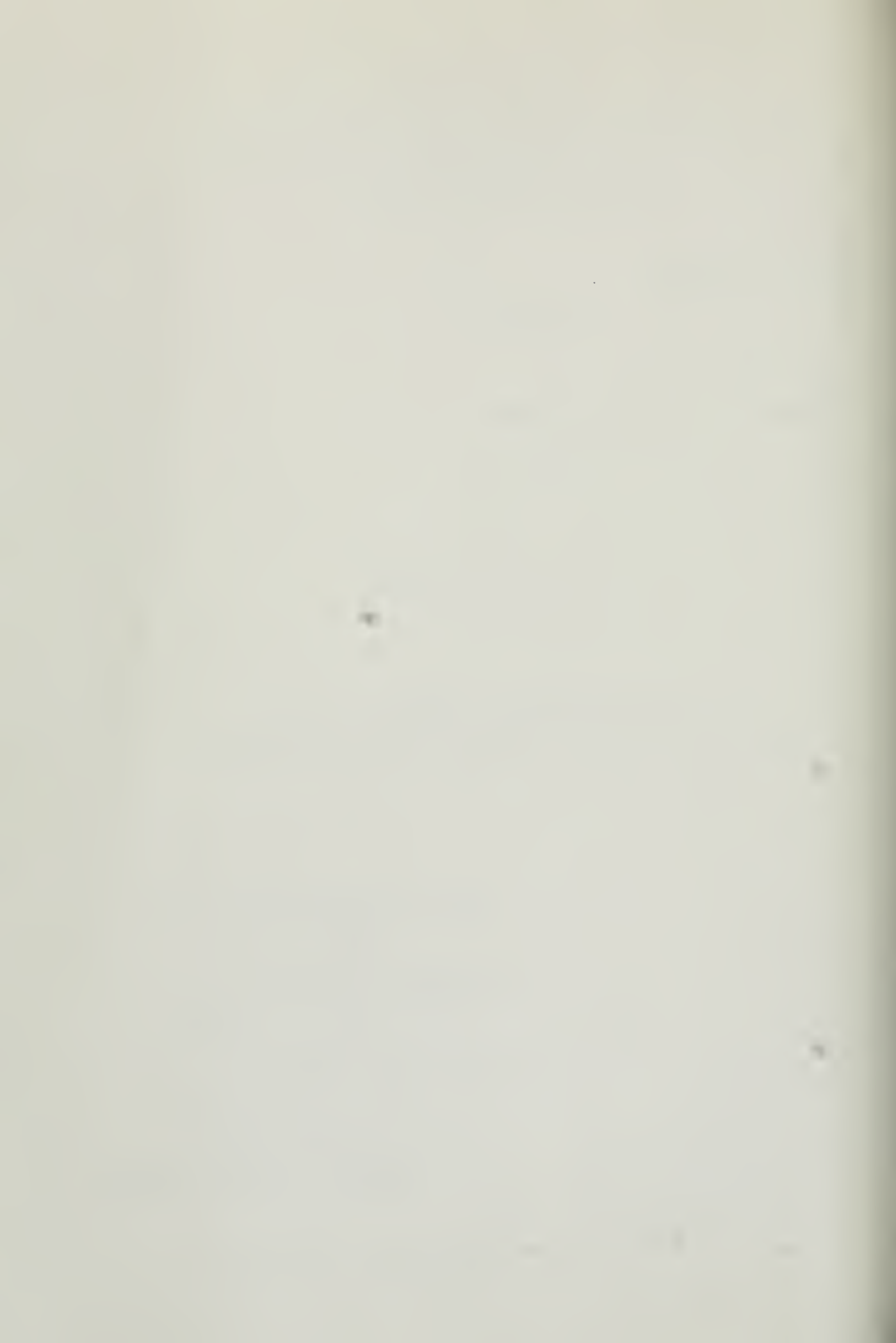
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APPELLEE'S BRIEF

STATEMENT OF THE CASE

On February 1, 1967 a six-count indictment was filed against appellant [hereinafter defendant] charging him with violations of Title 21, United States Code, Section 174 and Title 26, United States Code, Section 4705(a) concealment and sale of heroin and sale of heroin without an order form. Defendant waived his right to a jury trial and was found guilty on all six counts after a one day court trial before the Honorable Manuel L. Real, United States District Judge, on March 14, 1967.

On April 10, 1967 defendant was sentenced to imprisonment for five years on each count to run concurrently. Defendant filed a notice of appeal to this court on April 14, 1967.

Throughout the trial a Spanish speaking interpreter, Lia Sunshine, was provided for defendant [R. T. 5]. ^{1/} The Government's first witness was Federal Bureau of Narcotics Agent Frank Figueroa who identified the defendant. Agent Figueroa testified that he saw the defendant about six times during the four-month period from the first heroin sale to the trial [R. T. 7-8]. The first sale took place on December 19, 1966 after Agent Figueroa was introduced to defendant by the informant, Vincent Ramirez. Defendant used the alias "Cano". The three men met at Pat's Doughnut Shop in Los Angeles at 5:00 p. m. for a few minutes. Agent Figueroa and Ramirez left the restaurant. At 5:30 p. m. they returned and defendant agreed to sell an ounce of heroin at 6:15 p. m. After some confusion over the meeting place, Agent Figueroa and Ramirez met defendant at the entrance to the Third and Hill Street tunnel in downtown Los Angeles. They walked into the tunnel and defendant sold an ounce of heroin to Agent Figueroa for \$300.00 [R. T. 8-11].

On January 13, 1967 Agent Figueroa again met defendant at Pat's Doughnut Shop to arrange for another heroin sale [R. T. 13-14]. Later that evening they met at Sixth and Olive Streets in downtown Los Angeles and walked to an alley where defendant picked up the heroin and delivered it to Agent Figueroa in exchange for \$250.00 [R. T. 14-16]. Agent Figueroa testified that all of his conversations with the defendant were in the Spanish

1/ "R. T." refers to the Reporter's Transcript.

language [R. T. 14]. It was stipulated that the substances introduced into evidence were heroin [R. T. 34], and defendant concedes that a chain of custody was established [Appellant's Brief p. 4]. Agent Figueroa testified that he was able to identify defendant by the fact that defendant was missing the tip of his right index finger [R. T. 42, 102].

Agent Figueroa also testified that he met with defendant at Pat's Doughnut Shop on January 19, 1967 to discuss the purchase of three ounces of heroin. Defendant was arrested on the same date [R. T. 42-43].

The informant, Vincent Ramirez, testified for the prosecution. He said that he had known defendant for about five months and had seen him six or seven times [R. T. 44]. Ramirez was with defendant and Agent Figueroa on the evening of December 19, 1966 and corroborated the testimony of Agent Figueroa concerning the meetings and transfer of heroin by defendant on that date [R. T. 45-49].

Defendant first testified that he had never seen Agent Figueroa [R. T. 55]. He later stated that he saw Agent Figueroa "an hour and a half or two hours after they had arrested me" in Pat's Doughnut Shop [R. T. 56].

Defendant denied selling heroin to Agent Figueroa at any time. At the time of the first transaction on December 19, 1966 defendant said, "I must have been in my house cleaning up, washing up, because we usually eat at 6:30 or 7:00 with my wife." [R. T. 57]. On the evening of Friday, January 13, 1967 defendant

testified that he was at the home of his parents since on "all the Fridays, Saturdays and Sundays all of us in the family get together in my father's house or my parents' house and we play domino." [R. T. 58].

Defendant added that he had never seen the informant, Vincent Ramirez, and had never sold anyone any heroin [R. T. 59-61].

The defense called five relatives of the defendant in an effort to establish his alibi. Their testimony was not believed by the trial court [R. T. 112-13].

In rebuttal the Government called Federal Bureau of Narcotics Agent Irving Lipschutz who testified that he conducted the surveillance of Agent Figueroa on the dates of the transactions and on another occasion when Agent Figueroa and defendant met briefly. He also arrested defendant on January 19, 1967. At that time he took fingerprints of defendant and noted that the tip of defendant's right index finger was missing [R. T. 102]. This fact was mentioned by Agent Figueroa in his description of defendant prepared after the purchase of heroin on December 19, 1966 [R. T. 103].

The Government also introduced a certified exemplified copy of defendant's prior conviction for violation of California Health and Safety Code §11530 (possession of marihuana) [Government Exhibit 13].



ARGUMENT

THE VERDICT OF THE TRIAL COURT IS SUPPORTED BY OVERWHELMING EVIDENCE

Defendant's sole contention on this appeal is that the District Court should have acquitted him because the evidence on the question of identity was insufficient. This Court has repeatedly held that in considering the sufficiency of the evidence to sustain a conviction, the evidence must be viewed in the light most favorable to the prosecution.

White v. United States, 394 F. 2d 49, 51

(9th Cir. 1968);

Mott v. United States, 387 F. 2d 610, 612

(9th Cir. 1967);

Moody v. United States, 376 F. 2d 525, 527

(9th Cir. 1967);

Enriquez v. United States, 338 F. 2d 165

(9th Cir. 1964).

Since defendant does not deny that sales of heroin to Agent Figueroa occurred on December 19, 1966 and January 13, 1967, the sole question is whether defendant was sufficiently identified as the seller. The evidence on the question of identity included the following:

1. Agent Figueroa identified defendant as the person who sold heroin to him on both dates.
2. Agent Lipschutz identified defendant as the person



he saw with Agent Figueroa at the time that Agent Figueroa testified the sales of heroin occurred.

3. Defendant admitted that he frequently visited Pat's Doughnut Shop where the negotiations for both sales took place.

4. Agent Figueroa, Agent Lipschutz and defendant testified that defendant was arrested at Pat's Doughnut Shop on January 19, 1968. Agent Figueroa explained that he went to the doughnut shop on that date to purchase three ounces of heroin from defendant, who was present when Agent Figueroa arrived.

5. Agent Figueroa and Agent Lipschutz testified that the person selling heroin was missing the tip of his right index finger. The fingerprints of defendant at the time of his arrest revealed the same characteristic.

6. Agent Figueroa testified that all conversations at the time of the heroin sales were in Spanish. An interpreter was present for defendant at the trial.

7. The informant, Vincent Ramirez, identified defendant as the man who sold heroin to Agent Figueroa in his presence on December 19, 1966.

8. Agent Lipschutz testified that Agent Figueroa met defendant on one other occasion between December 19, 1966 and January 13, 1967, the dates of the heroin sales.

9. Defendant was identified and arrested by Agent Figueroa and Agent Lipschutz on January 19, 1967, six days after the last sale and only one month after the first sale.

10. The trial identifications were made just three

The first part of the document discusses the general principles of the proposed system. It is intended to be a practical guide for the management of the various departments of the government. The system is designed to be simple and efficient, and to be adapted to the needs of the country.

The second part of the document describes the organization of the government. It is divided into three main branches: the executive, the legislative, and the judicial. Each branch is further divided into various departments and offices.

The third part of the document discusses the powers and duties of the various branches and departments. It is intended to be a practical guide for the management of the various departments of the government.

The fourth part of the document discusses the financial system of the government. It is intended to be a practical guide for the management of the various departments of the government.

The fifth part of the document discusses the military system of the government. It is intended to be a practical guide for the management of the various departments of the government.

The sixth part of the document discusses the judicial system of the government. It is intended to be a practical guide for the management of the various departments of the government.

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The tenth part of the document discusses the social system of the government. It is intended to be a practical guide for the management of the various departments of the government.

months after the last transaction.

The only contrary evidence was defendant's assertion that he never saw Agent Figueroa until two hours after his arrest and did not know the informant, Vincent Ramirez. Defendant insisted that he must have been home at the time of the first sale and that he must have been playing dominoes with his family at the time of the second sale. The trial court may have disbelieved defendant's testimony in view of its inherent improbability and defendant's prior felony conviction for possession of marihuana. The testimony of defendant's relatives did not contradict the Government's witnesses since it primarily confirmed defendant's testimony that he was probably at home at the time of the first sale and must have been playing dominoes at the time of the second. None of the defense testimony was related to the dates of the heroin sales.

Defendant also called two witnesses who testified that a man named "Cano" had been in the area around Pat's Doughnut Shop. The trial court apparently accepted the Government's contention that this fact did not affect the substantial evidence introduced to establish that defendant, using the alias Cano, was the person who sold heroin to Agent Figueroa on both occasions.

The Government respectfully submits that the question of identity was established by overwhelming evidence.



CONCLUSION

For the reasons stated in the Argument, the judgment of the trial court should be affirmed.

Respectfully submitted,

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